

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 14,993

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social and Rehabilitation Services (SRS) revoking her registration to operate a family day care home. The issue is whether the Department's decision is in accord with the pertinent statutes and regulations.

FINDINGS OF FACT

The essential facts are not in dispute. The petitioner was issued a registration by SRS to operate a family day care home in October, 1994. At the time, the petitioner was separated from her husband, and no other adults lived in her household. The petitioner and her husband later reconciled and the husband returned to living in the petitioner's home. SRS conducts routine criminal record checks of all day care home operators, employees, and individuals who are reported to be living in the homes of those operators. On February 26, 1997, the Department received a Records Check Authorization Form from the petitioner on which she and her husband averred, inter alia, that they had "never been convicted of a felony, fraud, (or) a crime of violence".

Sometime thereafter, the Department received information from the Vermont Criminal Information Center that the petitioner's husband had been convicted of several crimes: forgery and false pretenses in May, 1993, and simple assaults in September, 1991, and February, 1992.

The petitioner and her husband do not dispute those convictions, but they maintain that the crimes occurred during a difficult period in the husband's life, and that the husband has reformed and is now a responsible and respected member of the community.

At about the same time that the Department received the information regarding the petitioner's husband's criminal record, it received a complaint that the petitioner had not allowed a child in her care to wear a religious necklace. It appears that the complaint came from a visiting nurse who was concerned that the petitioner had forbidden the child of an Asian refugee family with whom she worked to wear a Buddhist religious symbol around his neck when he was in the petitioner's day care.

The petitioner admitted that she had done this because of her fundamentalist Christian belief that such symbols are satanic idols that she cannot allow in her home. There is no evidence, however, that either

the child or his family objected to removing the necklace.<sup>(1)</sup>

On April 23, 1997, SRS mailed the petitioner a notice that it was revoking her day care registration because of her husband's criminal convictions and her failure to respect the religious beliefs of a child in her care.

### ORDER

The Department's decision is affirmed.

### REASONS

33 V.S.A. § 306(b)(3) and 3 V.S.A. § 814 authorize the Commissioner of Social and Rehabilitation Services to issue licenses for day care facilities, promulgate regulations applicable to those facilities, and to deny or terminate licenses for "cause after hearing". Among the regulations promulgated by the Commissioner are the following, which appear in the Department's Regulations for Family Day Care Homes:

Section I, No. 4 - The following persons may not operate, reside at, be employed at or be present at a family day care home:

a. persons convicted of fraud, felony or an offense involving violence. . . .

The petitioner's husband does not dispute that he was convicted of forgery, false pretenses, and simple assault. Although his testimony regarding his reformation and current status was credible, the above regulation imposes an absolute bar to persons with such criminal records from being in a family day care home. It cannot be concluded that the Department abused its discretion in determining that the violation of this regulation was cause for revocation of the petitioner's day care license. Therefore, the Board is bound by law to affirm the Department's decision on this basis. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.<sup>(2)</sup>

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1. Neither the child's parents nor the visiting nurse appeared at the hearing.

2. Inasmuch as the petitioner's husband's criminal record provides a sufficient basis to affirm the Department's decision, the Board need not consider the issue of whether the petitioner's refusal to allow the wearing of religious symbols constitutes a violation of the regulations.